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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,886	04/30/2002	Riccardo Losa	PST6220P1US/2168	6033

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AKZO NOBEL PHARMA PATENT DEPARTMENT  
PO BOX 318  
MILLSBORO, DE 19966

EXAMINER
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WEDDINGTON, KEVIN E

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/030,886

**Applicant(s)**

LOSA, RICCARDO

**Examiner**

Kevin E. Weddington

**Art Unit**

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14-18, 27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14, 16-18 and 27 is/are rejected.
- 7) ☒ Claim(s) 15 and 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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The allowance of claims 14-18, 27 and 28 is withdrawn by the Notice of Withdrawal From Issue under 37 CFR 1.1313(b) dated October 22, 2004 as suggested by the Group Director.

Claims 14-18, 27 and 28 are presented for examination.

Applicant's amendment filed September 3, 2004 has been received and entered.

### *Claim Objections*

Claim 15 is objected to as being dependent upon a rejected base claim 14, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 28 is objected to as being dependent upon a rejected base claim 27, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 18 recites the limitation "the composition" in line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Applicant may wish delete claim 18 since the claim is a duplicate of claim 15.

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 16, 17 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nitsas (6,106,838) of record, for reason of record as set forth in the previous Office action dated September 30, 2002.

Nitsas teaches an antimicrobial pharmaceutical composition comprising an antimicrobial-effective amount of an essential oil obtained from *Origanum vulgare* ssp. *Hirtum* containing thymol and carvacrol. Note the weight ratio of the carvacrol to thymol is 10:1, the same as applicant's claim 1. The reference also teaches the antimicrobial pharmaceutical composition is used to treat diseases caused by pathogenic microorganisms of the abdominal tract, the same as applicant's use for the treatment of swine dysentery (the inflammation of the abdominal and intestinal tract of swine) claims 17 and 27.

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The instant invention differs from the cited reference in that the cited reference does not teach the applicant's preferred individual amounts of carvacrol and thymol in the composition. However, to determine individual amounts of each component of the instant composition having optimum therapeutic index is well within the level of one having ordinary skill in the art, and the artisan would have been motivated to determine optimum amounts to get the maximum effect of each component.

Claims 14, 16, 17 and 27 are not allowed.

*Response to Amendment*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 16, 17 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nitsas (6,106,838) of record as discussed above supra.

Applicant's remarks of September 3, 2004 regarding the prior art does not teach or suggest the treatment of diseases caused by Treponema are not persuasive since the intended use limitation of for treatment of diseases caused by Treponema do not affect nor alter the function of the composition nor the components thereof. (See In re Spada 15 USPQ2d 1655 (CAFC, 1990)).

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Applicant's remarks regarding the prior art's carvacrol to thymol ratio of 10:1 has an absolute bottom and the applicant's same ratio of 10:1 is an upper limit are not persuasive since the applicant's ratio of 10:1 overlaps the prior art. (See MPEP 2144.05). Also applicant's states the preferred ratio of 2:3 to 4:1 have a strong synergistic effect, but the dependent claims 14 and 17 do not recite this allowable feature.

The rejection made under 35 USC 103 is adhered to.

Claims 14, 26, 17 and 27 are not allowed.


To overcome this rejection, the applicant may wish to amend claims 14 and 27 by deleting the phrase "1:5 to 10:1" and inserting the strong synergistic effect ratio, --2:3 to 4:1--, would place the claims in a condition for allowance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin E. Weddington whose telephone number is (571)272-0587. The examiner can normally be reached on 11:00 am-7:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on (571)272-0953. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Kevin E. Weddington  
Primary Examiner  
Art Unit 1614

K. Weddington  
December 30, 2004